

1 **IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND**

2 **MARYLAND SHALL ISSUE, INC.**
3 **9613 Harford Rd., Ste C #1015**
4 **Baltimore, Maryland 21234-2150**

5 **ENGAGE ARMAMENT LLC**
6 **701 E. Gude Dr., Ste 101,**
7 **Rockville, Maryland 20850**

8 **ANDREW RAYMOND**
9 **14819 Poplar Hill Rd**
10 **Darnestown MD 20874**

7 **Case No.: 485899V**

11 **CARLOS RABANALES**
12 **7727 Green Valley Rd,**
13 **Frederick, Maryland 21701**

11 **JURY DEMANDED**

12 **BRANDON FERRELL**
13 **40 Mountain Laurel Court**
14 **Gaithersburg, Maryland 20879**

15 **DERYCK WEAVER**
16 **8712 Lowell Street**
17 **Bethesda, Maryland 20817**

18 **JOSHUA EDGAR**
19 **8416 Flower Hill Terr.**
20 **Gaithersburg Maryland 20879**

21 **I.C.E. FIREARMS & DEFENSIVE**
22 **TRAINING, LLC,**
23 **24129 Pecan Grove Lane**
24 **Gaithersburg, Maryland 20882**

25 **RONALD DAVID**
26 **24129 Pecan Grove Lane**
27 **Gaithersburg, Maryland 20882**

28 **NANCY DAVID**
29 **24129 Pecan Grove Lane**
30 **Gaithersburg, Maryland 20882**

31 ***Plaintiffs,***

1 v.

2 **MONTGOMERY COUNTY,**
3 **MARYLAND**
4 **101 Monroe Street**
Rockville, Maryland 20850

5 *Defendant.*

6 **SERVE:**

7 **Marc P. Hansen, Esq.**
8 **County Attorney,**
Montgomery County, MD
101 Monroe Street, 3rd floor
Rockville, Maryland 20850

9
10 *Service Agent for*
11 *Defendant.*

12
13
14 **FIRST AMENDED**

15 **VERIFIED COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF**
16 **AND FOR COMPENSATORY DAMAGES, NOMINAL DAMAGES, PUNITIVE**
17 **DAMAGES AND ATTORNEY'S FEES AND COSTS**

18 COME NOW, the Plaintiffs, through counsel, and sue the Defendant, and for cause state as
19 follows:

20
21 **INTRODUCTION**

22 1. On April 16, 2021, the Defendant, Montgomery County, Maryland ("the County")
23 signed into law Bill 4-21, a copy of which is attached to this complaint as Exhibit A. Bill 4-21 becomes
24 effective on July 16, 2021. Through the enactment of County ordinance 4-21, the County has
25 unlawfully exceeded its powers and jurisdiction to criminally regulate the possession and transfer of
26 lawfully owned firearms in a way that is in direct conflict with Article XI—EA, § 3 and Article XI—A.
27

§ 6 of the Maryland Constitution and in a manner that is inconsistent with multiple existing Maryland statutes. The restrictions enacted by Bill 4-21 violate the Maryland Takings Clause, Article III § 40 and the Due Process Clause of Article 24 of the Maryland Declaration of Rights by depriving plaintiffs of their vested property rights in the personal property regulated by Bill 4-21. ~~The ban on the mere possession or dissemination of computer code imposed by Bill 4-21 violates the First Amendment to the United States Constitution. The hopelessly vague language adopted by Bill 4-21 violates The hopelessly vague provisions violate~~ the Due Process Clause of the Fourteenth Amendment and the Due Process Clause of Article 24 of the Maryland Declaration of Rights. Maryland County Code § 57-11, as amended by Bill 4-21 violates the Second Amendment to the Constitution in so far as it purports to regulate or ban the sale, transfer, possession or transport of any firearm or any ammunition with 100 yards of a place of public assembly as that term is defined by Bill 4-21. To the extent that Maryland Code, Criminal Law § 4-209(b) purports to authorize the regulations imposed by Bill 4-21, it is likewise unconstitutional under the Second Amendment. Pursuant to 42 U.S.C. § 1983, Plaintiffs seek declaratory and injunctive relief and compensatory damages, including nominal damages, for the violations of their Federal constitutional rights vague language adopted by Bill 4-21, as alleged below. Plaintiffs further seek an award of attorneys' fees under 42 U.S.C. § 1988, in an amount to be determined, for the violations of their Federal constitutional rights, as alleged below. Plaintiffs seek declaratory and injunctive relief on their State Constitutional and statutory law claims.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to MD Code, Courts and Judicial Proceedings, § 1-501, and MD Code, Courts and Judicial Proceedings, § 3-403, as this complaint seeks prospective declaratory and injunctive relief damages, attorneys' fees pursuant to 42 U.S.C. § 1988, and other relief afforded by 42 U.S.C. § 1983. This complaint raises both state law claims as

well as claims arising under the United States Constitution. This declaratory judgment action is brought pursuant to MD Code, Courts and Judicial Proceedings § 3-406, and MD Code, Courts and Judicial Proceedings, § 3-409, for the purpose of determining questions of actual controversy between the parties and terminating uncertainty and controversy giving rise to this proceeding. Plaintiffs request a speedy hearing of this action in accordance with MD Code, Courts and Judicial Proceedings, § 3-409(e).

3. Venue is properly in this Court in this matter pursuant to MD Code, Courts and Judicial Proceedings, § 6-201, as the defendant resides, carries on a regular business and maintains its principal offices in Montgomery County, Maryland. Montgomery County is named as a defendant and is a necessary party to this action under MD Code, Courts and Judicial Proceedings, § 3-405(b).

MONTGOMERY COUNTY BILL 4-21

4. In relevant part, Bill 4-21 amends several sections of Chapter 57 of the Montgomery County Code (“County Code”). Specifically, Bill 4-21 amends Section 57-1, to broaden the definition of a “gun or firearm” to include “**a ghost gun**” and, in addition, to provide the following new definitions (additions enacted by Bill 4-21 are **bolded**, portions of existing law that are deleted by Bill 4-21 are in *brackets and italics*):

a. A “3D printing process” is defined as “**a process of making a three-dimensional, solid object using a computer code or program, including any process in which material is joined or solidified under computer control to create a three-dimensional object:**”

b. A "ghost gun" is defined as "a firearm, including an unfinished frame or receiver, that lacks a unique serial number engraved or cased in metal alloy on the frame or receiver by a licensed manufacturer, maker or importer under federal law or markings in accordance with 27 C.F.R. § 479.102. It does not include a firearm that has been rendered permanently"

1 inoperable, or a firearm that is not required to have a serial number in accordance with the
2 Federal Gun Control Act of 1968;”

3 c. The term “**Undetectable gun**” is defined as:

4 (A) a firearm that, after the removal of all its parts other than a major component, is not
5 detectable by walk-through metal detectors commonly used at airports or other public
6 buildings;

7 (B) a major component that, if subjected to inspection by the types of detection devices
8 commonly used at airports or other public buildings for security screening, would not generate
9 an image that accurately depicts the shape of the component; or

10 C) a firearm manufactured wholly of plastic, fiberglass, or through a 3D printing process.

11 d. A “**Major component**” is defined as “with respect to a firearm: (1) the slide or cylinder
12 or the frame or receiver; and (2) in the case of a rifle or shotgun, the barrel;”

13 e. A “Place of public assembly” is defined as a place where the public may assemble,
14 whether the place is publicly or privately owned, including a *[government owned]* park *[identified*
15 *by the Maryland-National Capital Park and Planning Commission]*; place of worship; [elementary
16 or secondary] school; *[public]* library; *[government-owned or -operated]* recreational facility;
17 hospital; community health center; long-term facility; or multipurpose exhibition facility, such as
18 a fairgrounds or conference center. A place of public assembly includes all property associated with
19 the place, such as a parking lot or grounds of a building.

20 5. Bill 4-21 amends Section 57-7 of the County Code to provide (new additions in bold):

21 (c) A person must not give, sell, rent, lend, or otherwise transfer to a minor:

22 (1) a ghost gun or major component of a ghost gun;

23 (2) an undetectable gun or major component of an undetectable gun;

1 **or**

2 **(3) a computer code or program to make a gun through a 3D printing**
3 **process.**

4
5 **(d) A person must not purchase, sell, transfer, possess, or transfer a ghost gun, including**
6 **a gun through a 3D printing process, in the presence of a minor.**

7 **(e) A person must not store or leave a ghost gun, an undetectable gun, or a**
8 **major component of a ghost gun or an undetectable gun, in a location**
9 **that the person knows or should know is accessible to a minor.**

10 6. Bill 4-21 also amends 57-11 of the County Code to provide (new provisions added by

11 Bill 4-21 are in **bold**, portions deleted by Bill 4-21 are in *brackets* and *italics*):

12 (a) [A] **In or within 100 yards of a place of public assembly**, a person must not:

13 (1) sell, transfer, possess, or transport **a ghost gun, undetectable gun**, handgun, rifle,
14 or shotgun, or ammunition **or major component** for these firearms~~/, in or within 100~~
15 *yards of a place of public assembly]*; **or**

16 (2) **sell, transfer, possess, transport a firearm created through a 3D printing**
17 **process.**

18 (b) This section does not:

19 * * * *;

20 (3) apply to the possession of a firearm or ammunition, **other than a**
21 **ghost gun or an undetectable gun**, in the person's own home;

22 (4) apply to the possession of one firearm, and ammunition for the
23 firearm, at a business by either the owner **who has a permit to**
24 **carry the firearm**, or one authorized employee of the business

who has a permit to carry the firearm;

(5) apply to the possession of a handgun by a person who has

received a permit to carry the handgun under State law; or

(A) transported in an enclosed case or in a locked firearms rack

on a motor vehicle, unless the firearm is a ghost gun or an

undetectable gun; or

* * * *

7. Bill 4-21 leaves unaltered the penalties for a violation of Chapter 57 of the County Code. Under Section 57-15 of the County Code, with an exception for violations of Section 5-8 not applicable here: "Any violation of this Chapter or a condition of an approval certificate issued under this Chapter is a Class A violation to which the maximum penalties for a Class A violation apply." Under Section 1-19 of the County Code, the maximum penalties applicable for a violation of the offenses created by Bill 4-21 are criminal penalties of a \$1,000 fine and 6 months in jail. Under Section 1-20(c) of the County Code, "[e]ach day any violation of County law continues is a separate offense."

STATE AND FEDERAL FIREARMS LAW

8. Under Federal law, a person may legally manufacture a firearm for his own personal use. See 18 U.S.C. § 922(a). See *Defense Distributed v. Department of State*, 838 F.3d 451 (5th Cir. 2016). Under Maryland law, a person is likewise permitted to manufacture a firearm for her own personal use. Firearms manufactured for personal use are not required to be serialized or engraved with a serial number under Federal law or Maryland law.

9. Under Federal law, 18 U.S.C. § 921(a)(3), “[t]he term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a

1 projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm
2 muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique
3 firearm.”

4 10. Similarly, under Maryland law, MD Code, Public Safety, § 5-101(h)(1), a “firearm”
5 is defined as “(i) a weapon that expels, is designed to expel, or may readily be converted to expel a
6 projectile by the action of an explosive; or (ii) the frame or receiver of such a weapon.” Maryland law
7 does not define “frame or receiver.” Maryland law does not define or regulate the possession, sale or
8 transfer of “major components” for firearms. Fully finished receivers are commonly sold with serial
9 numbers already engraved in compliance with Federal law and such fully finished receivers may be
10 lawfully assembled by law-abiding persons for personal use by obtaining other components that
11 are lawfully available and sold throughout the United States.

12 11. Since 1968, the Federal Bureau of Alcohol, Tobacco and Firearms (“ATF”) has
13 defined a “receiver” as “[t]hat part of a firearm which provides housing for the hammer, bolt or
14 breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive
15 the barrel.” See 27 C.F.R. § 478.11; 33 Fed. Reg. 18558 (1968). Under ATF Guidance, an unfinished
16 receiver that has not yet had “machining of any kind performed in the area of the trigger/hammer
17 (fire-control) recess (or cavity),” is not considered to be a receiver and is thus not considered to be a
18 firearm. ATF Firearms Technology Branch Technical Bulletin 14-01. Such firearms are sometimes
19 informally called “80% receivers,” depending on the extent to which milling has already occurred.
20 While Bill 4-21 purports to regulate “major components” of firearms and defines major components
21 to mean “(1) the slide or cylinder or the frame or receiver; and (2) in the case of a rifle or shotgun, the
22 barrel,” Bill 4-21 does not attempt to define “frame or receiver.” Federal law does not require the
23 manufacturer place any serial number on the slide or cylinder, or barrel, but rather requires that “an
24

1 individual serial number” be placed on the “frame or receiver.” 27 C.F.R. § 478.92(a)(1)(i). See also
 2 27 C.F.R. § 479.102. Maryland law does not regulate the placement of serial numbers. A receiver that
 3 has been serialized by a federally regulated firearms manufacturer is treated as a “firearm” under
 4 Federal law and is thus subject to the ~~fully~~full panoply of Federal regulation, including the
 5 performance of a background check otherwise required by Federal law. These definitions were
 6 modified and updated by ATF regulations published on April 26, 2022. See *Definition of ‘Frame or*
 7 *Receiver’ and Identification of Firearms*, 87 Fed. Reg. 24651 (April 26, 2022).

9 912. Persons otherwise prohibited from owning firearms are still legally barred from the
 10 manufacture, transfer, or possession of modern firearms or modern ammunition, regardless of the
 11 method of manufacture. Such possession, actual or constructive, is a violation of 18 U.S.C. § 922(g),
 12 which is punishable by up to 10 years imprisonment under Federal law. See 18 U.S.C. § 924(a)(2).
 13 Possession of a firearm by a prohibited person is likewise a serious crime under Maryland law. See
 14 MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1).

15 1013. Under current Federal law, it is unlawful to “manufacture, import, sell, ship, deliver,
 16 possess, transfer, or receive” any firearm that is not “detectable” by a “Security Exemplar” or any
 17 “major component” of which does not show up accurately on airport x-ray machines. 18 U.S.C. §
 18 922(p). A knowing violation of that prohibition is a Federal felony, punishable by five years of
 19 imprisonment and a fine. See 18 U.S.C. § 924(f). For these purposes, Federal law provides that “the
 20 term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General,
 21 that is-- (i) constructed of, during the 12-month period beginning on the date of the enactment of this
 22 subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and
 23 (ii) suitable for testing and calibrating metal detectors.” 18 U.S.C. § 922(p)(2)(C).

1 ¶114. Law-abiding Americans, including hobbyists, have lawfully manufactured firearms
2 for personal use since before the Revolutionary War and that practice continues up to the present day.
3 While there is no definitive count of such personal-use firearms, the total number of such firearms
4 manufactured for personal use is undoubtedly in the hundreds of thousands and are in common use
5 within the United States and Maryland. Such firearms manufactured for personal use include rifles
6 and pistols and all such firearms successfully manufactured for personal use may be used for
7 legitimate lawful purposes, including self-defense in the home. The Second Amendment to the United
8 States Constitution guarantees a right to use firearms “for the core lawful purpose of self-defense.”
9 *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). The Second Amendment protects arms that
10 are “typically possessed by law-abiding citizens for lawful purposes.” (Id. at 625).

13 ¶1215. Under MD Code, Criminal Law, § 4-203(b)(3), Maryland law expressly permits a
14 person to transport a handgun “on the person or in a vehicle while the person is transporting the
15 handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or
16 between bona fide residences of the person, or between the bona fide residence and place of business
17 of the person, if the business is operated and owned substantially by the person if each handgun is
18 unloaded and carried in an enclosed case or an enclosed holster.” Such transport and carriage of long
19 guns, such as rifles and shotguns, are permitted under Maryland law without restriction.

21 ¶1316. Under MD Code, Criminal Law, § 4-203(b)(5), Maryland law expressly permits “the
22 moving by a bona fide gun collector of part or all of the collector’s gun collection from place to place
23 for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an
24 enclosed holster.” Such transport and carriage of long guns, such as rifles and shotguns, are permitted
25 under Maryland law without restriction.

1 1417. Under MD Code, Criminal Law, § 4-203(b)(6), Maryland law expressly permits “the
2 wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or
3 leases or where the person resides or within the confines of a business establishment that the person
4 owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit under
5 MD Code, Public Safety, § 5-306. There is no limitation on the number of handguns or types of
6 ammunition that may be possessed, worn, carried or transported under this provision of Section 4-
7 203(b)(6). Such transport, wear and carriage of rifles and shotguns in a person’s residence or business
8 are permitted under Maryland law without restriction.
9

10 1518. Under MD Code, Criminal Law, § 4-203(b)(7), Maryland law expressly permits “the
11 wearing, carrying, or transporting of a handgun by a supervisory employee: (i) in the course of
12 employment; (ii) within the confines of the business establishment in which the supervisory employee
13 is employed; and (iii) when so authorized by the owner or manager of the business establishment.”
14 Such persons are not required to possess or obtain a Maryland carry permit under MD Code, Public
15 Safety, § 5-306. There is no limitation on the number of handguns or ammunition that may be
16 possessed, worn, carried or transported under this provision of Section 4-203(b)(7). There is no
17 limitation on the number of supervisory employees whom the employer may authorize to carry a
18 firearm under this section. Such transport, wear and carriage of rifles and shotguns by business
19 employees are permitted under Maryland law without restriction.
20

21 1619. Under MD Code, Public Safety, § 5-133(d)(2)(i), a person under the age of 21 may
22 temporarily transfer and possess a regulated firearm, including a handgun, if the person is “1. under
23 the supervision of another who is at least 21 years old and who is not prohibited by State or Federal
24 law from possessing a firearm; and 2. acting with the permission of the parent or legal guardian of the
25 transferee or person in possession.” Under MD Code, Public Safety, § 5-133(d)(2)(iv), a person under
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1 the age of 21 may temporarily transfer or possess a regulated firearm, including a handgun, if the
2 person is “1. participating in marksmanship training of a recognized organization; and 2. under the
3 supervision of a qualified instructor.”
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5 17.20. MD Code, Criminal Law, § 4-104, expressly permits a minor child under the age of
6 16 to have access to any firearm if that access “is supervised by an individual at least 18 years old” or
7 if the minor child under the age of 16 has a certificate of firearm and hunter safety issued under § 10-
8 301.1 of the Natural Resources Article. By necessary implication, access to a firearm by a minor child
9 between the ages of 16 and 18 is permitted by Section 4-104 without restriction.
10

11 1821. The regulation of unserialized firearms is a matter of significant state-wide and
12 national interest. In the 2021 General Assembly, ghost guns were addressed in three bills. Two bills,
13 House Bill 638 and Senate Bill 624, would have imposed extensive regulation on the possession and
14 transfer of ghost guns, but would have also afforded a path for existing owners to retain possession
15 of their existing, unserialized firearms that they had lawfully manufactured for personal use. One bill,
16 House Bill 1291, would have banned unserialized firearms manufactured for personal use completely.
17 Similar legislation was proposed in the 2020 General Assembly session, with House Bill 910 and
18 Senate Bill 958, and in the 2019 General Assembly session, with House Bill 740 and Senate Bill 882.
19 House Bill 740 passed the House of Delegates in 2019, and it instructed the Maryland State Police to
20 “develop a plan for a system in the State for the registration of firearms not imprinted with a serial
21 number issued by a federally licensed firearms manufacturer or importer and submit a report
22 describing the system” In the 2021 Session, provisions of House Bill 638 were incorporated into
23 other legislation that had passed the Senate (Senate Bill 190), and that bill, as amended, passed the
24 House Judiciary Committee and was reported to the floor of the House of Delegates, where it was
25 further amended. That bill ultimately did not pass the House.
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1 19.22. On May 7, 2021, the Attorney General announced that the Department of Justice, the
 2 Bureau of Alcohol, Tobacco and Firearms, would engage in new rule-making proceedings for the
 3 purpose of regulating the manufacture and transfer of “ghost guns.” See Press Release, Justice
 4 Department Proposes New Regulation to Update Firearm Definitions Proposed Rule Seeks to Close
 5 “Ghost Gun” Loophole (available at <https://bit.ly/3wceMr3>). These proposed regulations have been
 6 published in the Federal Register. 86 Fed. Reg. 27720-1001, 2021 WL 2012830 (May 21, 2021). The
 7 proposed regulations would regulate manufacturers and dealers but would not limit or regulate the
 8 possession of unserialized firearms lawfully built by individuals for their own personal use. These
 9 proposed regulations do not limit or regulate the sale or possession of receivers that are otherwise
 10 serialized in accordance with existing Federal law.

MARYLAND CONSTITUTIONAL AND STATUTORY PREEMPTION PROVISIONS

14 2023. Maryland law contains several preemption statutes that broadly preempt local
 15 jurisdictions from regulating firearms:

16 a. MD Code, Public Safety, § 5-104, provides that “[t]his subtitle supersedes any
 17 restriction that a local jurisdiction in the State imposes on a sale of a regulated firearm, and the State
 18 preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.”

20 b. MD Code, Public Safety, § 5-133(a), provides that “[t]his section supersedes any
 21 restriction that a local jurisdiction in the State imposes on the possession by a private party of a
 22 regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession
 23 of a regulated firearm.”

25 c. MD Code, Public Safety, § 5-134(a), provides that “[t]his section supersedes any
 26 restriction that a local jurisdiction in the State imposes on the transfer by a private party of a regulated

1 firearm, and the State preempts the right of any local jurisdiction to regulate the transfer of a regulated
2 firearm.”

3 ed. MD Code, Public Safety, § 5-207(a), enacted into law in 2021 as part of House
4 Bill 4, provides that “[t]his section supersedes any restriction that a local jurisdiction in the State
5 imposes on the transfer by a private party of a rifle or shotgun, and the State preempts the right of any
6 local jurisdiction to regulate the transfer of a rifle or shotgun.”

7 de. MD Code, Criminal Law, § 4-209, provides:

8 (a) Except as otherwise provided in this section, the State preempts the right of a county,
9 municipal corporation, or special taxing district to regulate the purchase, sale, taxation,
10 transfer, manufacture, repair, ownership, possession, and transportation of:

11 (1) a handgun, rifle, or shotgun; and
12 (2) ammunition for and components of a handgun, rifle, or shotgun.

13 Exceptions

14 (b)(1) A county, municipal corporation, or special taxing district may regulate the purchase,
15 sale, transfer, ownership, possession, and transportation of the items listed in subsection (a)
16 of this section:

17 (i) with respect to minors;
18 (ii) with respect to law enforcement officials of the subdivision; and
19 (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park,
church, school, public building, and other place of public assembly.

20 (2) A county, municipal corporation, or special taxing district may not prohibit the teaching
21 of or training in firearms safety, or other educational or sporting use of the items listed in
22 subsection (a) of this section.

23 For purposes of these preemption provisions, a “regulated firearm” includes any handgun. MD Code,
24 Public Safety, § 5-101(r)(1). For purposes of these preemption provisions, the terms “handgun,”
25 “rifle,” and “shotgun” are defined in MD Code, Criminal Law, § 4-201.

26 21.24. Section 6 of Chapter 13, of the 1972 Sessions Laws of Maryland provides: “That all
27 restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing,
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1 carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby
 2 preempts the right of the political subdivisions to regulate said matters.” <https://bit.ly/2SvsRkJ>. This
 3 provision has been held to preclude the County from regulating the sale of ammunition in the County.
 4 See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985).

5 2225. Montgomery County has chartered home rule under Section 3 of Article XI-A of the
 6 Maryland Constitution and, under that provision, the County is empowered to enact “local laws.”
 7 Section 4 of Article XI-A of Such local laws are “subject to the Maryland Constitution states that
 8 “[a]ny law so drawn as to apply to two or more of the geographical subdivisions and Public General
 9 Laws of this State shall not be deemed a Local Law, within the meaning of this Act.”” (Id.). Article
 10 XI-EA, § 6, of the Maryland Constitution provides that “[a]ll charter provisions, or amendments
 11 thereto, adopted under the provisions of further that “this Article shall not be construed to authorize
 12 the exercise of any powers in excess of those conferred by the Legislature upon said Counties or City
 13 as this Article, shall be subject to all applicable laws enacted by the General Assembly sets forth.”
 14 Under these provisions, Montgomery County is not empowered to enact “general laws.” Under
 15 Maryland law, a general law “deals with the general public welfare, a subject which is of significant
 16 interest not just to any one county, but rather to more than one geographical subdivision, or even to
 17 the entire state.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976). Thus, “some statutes,
 18 local in form, have been held to be general laws, since they affect the interest of the whole state.” *Cole*
 19 *v. Secretary of State*, 249 Md. 425, 434, 240 A.2d 272, 278 (1968). Similarly, “[a] law may be local
 20 in the sense that it operates only within a limited area, but general in so far as it affects the rights of
 21 persons without the area to carry on a business or to do the work incident to a trade, profession, or
 22 other calling within the area.” *Dasch v. Jackson*, 170 Md. 251, 261, 183 A. 534, 538 (1936).

1 2326. Under the Maryland Express Powers Act, MD Code, Local Government, § 10-202(a),
2 a “[a] county may enact local laws and may repeal or amend any local law enacted by the General
3 Assembly on any matter covered by the express powers in this title.” However, MD Code, Local
4 Government, §10-206(a), provides that a county may pass an ordinance, resolution, or bylaw only if
5 such laws are “not inconsistent with State law.” Similarly, MD Code, Local Government, §10-206(b),
6 provides that “[a] county may exercise the powers provided under this title only to the extent that the
7 powers are not preempted by or in conflict with public general law.” Under binding precedent, a local
8 law is inconsistent with State law when the local law prohibits an activity which is permitted by State
9 law, or permits an activity prohibited by state law. See *City of Baltimore v. Sitnick*, 254 Md. 303, 317,
10 255 A.2d 376, 382 (1969) (“a political subdivision may not prohibit what the State by general public
11 law has permitted”).
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PARTIES

Plaintiffs:

2427. Plaintiff Maryland Shall Issue, Inc. (“MSI”) is a Maryland corporation, located at 9613 Harford Rd., Ste C #1015, Baltimore, MD 21234-2150. MSI is an Internal Revenue Service certified Section 501(c)(4), non-profit membership organization with approximately 2000 members statewide. MSI is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. The purposes of MSI include promoting the exercise of the right to keep and bear arms; and education, research, and legal action focusing on the constitutional right to privately own, possess and carry firearms. MSI has one or more members who live and/or work in Montgomery County, and who possess “ghost guns” in their homes and/or in their businesses and engage in other conduct regulated by Bill 4-21. MSI has one or more members who live outside of Montgomery County, but who travel to and/or work within Montgomery County. MSI has one or more members who lives in Montgomery County, but who do not have a Maryland carry permit. MSI has one or more members who travels in or through Montgomery County, but who do not have a Maryland carry permit. Each of the individual plaintiffs identified below are members of MSI. Among the membership of MSI are “qualified instructors” who engage in firearms training, including firearms instruction of minors.

2528. MSI filed extensive comments with Montgomery County, objecting to Bill 4-21 prior to its enactment. A true and correct copy of those comments are attached to this Complaint as Exhibit B. These comments were ignored by the County in enacting Bill 4-21 and omitted as part of the legislative packet made public by the County. As a participant in this process, MSI has a specialized interest in the subject matter addressed by Bill 4-21. The Bill, as enacted, burdens the ability of MSI

1 members to keep and bear arms within Montgomery County, including firearms that are otherwise
2 lawful in Maryland, but nonetheless are banned or restricted by Bill 4-21. MSI is thus aggrieved by
3 the passage of Bill 4-21. MSI has representational standing to sue on behalf its members who live in
4 Montgomery County or who travel through Montgomery County or who otherwise are adversely
5 affected by the County's unlawful actions.

6
7 2629. Plaintiff ENGAGE ARMAMENT LLC ("Engage"), is a Maryland corporation, and
8 is located at 701 E. Gude Dr., Ste 101, Rockville, MD 20850, within Montgomery County. Pursuant
9 to 18 U.S.C. § 923, Engage is a Type I and Type VII and Type X Federally licensed dealer and
10 manufacturer of firearms and explosive devices at its current location. See 27 C.F.R. § 478.41 *et seq.*
11 Pursuant to MD Code, Public Safety, § 5-106, Engage is a Maryland State licensed firearms dealer
12 and is thus authorized by State law to engage "in the business of selling, renting or transferring
13 regulated firearms." As part of its business, Engage manufactures firearm components, including
14 receivers, and then assembles such components into finished firearms which it then sells, all in full
15 compliance with Federal and State law. Engage is a dealer for machines and computer code for the
16 manufacture of firearms by individuals for personal use. It regularly demonstrates such computer code
17 to potential purchasers. From time to time, Engage stocks and sells unserialized items, which are not
18 receivers under Federal law, but which can be lawfully machined and built into firearms by the
19 purchaser for personal use. These otherwise lawful items are banned as "ghost guns" by Bill 4-21. As
20 part of its business, Engage may transfer firearms in the presence of a minor who is accompanied by
21 a parent. The business location of Engage is arguably within 100 yards of a "place of public assembly"
22 as defined by Bill 4-21.
23

24
25 2730. Plaintiff Andrew Raymond is an individual co-owner of Engage, and resides in
26 Montgomery County, Maryland. His residence in Darnestown, Maryland is within 100 yards of a
27
28

1 public street. Plaintiff Raymond regularly conducts the business activities of Engage. He is the father
2 of two minor children who reside with him at his residence in Montgomery County. He assembles
3 firearms in the presence of his children in his residence. He possesses in his home computer code
4 which may be used to manufacture firearms within the meaning of Bill 4-21. He possesses one or
5 more ghost guns at his residence and at his place of employment at Engage. As co-owner of Engage,
6 he has authorized more than one supervisory employee at Engage to wear and carry loaded firearms
7 within the business confines of Engage for their self-protection and for the protection of the business.
8 At Engage, he possesses more than one firearm for the protection of himself and his business. He
9 possesses computer code of the type regulated by Bill 4-21

10 | 2831. Plaintiff Carlos Rabanales is an individual co-owner of Engage. He resides in
11 Frederick County, Maryland and regularly conducts the business activities of Engage. As co-owner
12 of Engage, he has authorized more than one supervisory employee at Engage to carry firearms within
13 the business confines of Engage for their self-protection and for the protection of the business. At
14 Engage, he possesses more than one firearm for the protection of himself and his business. He may
15 transport unserialized firearm parts and components to and from Engage as part of the business of
16 Engage.

17 | 2932. Plaintiff Brandon Ferrell₅ is an individual supervisory employee of Engage, and
18 resides in Montgomery County, Maryland. His residence in Gaithersburg is arguably within 100 yards
19 of a place of public assembly, as defined by Bill 4-21. Pursuant to MD Code, Criminal Law, 4-
20 203(b)(7), he is considered to be a supervisory employee at Engage and wears and carries a fully
21 loaded handgun in the course of his employment at Engage, “within the confines of a business
22 establishment” as “authorized” by the owners of Engage. He possesses one or more “ghost guns” at
23 his residence and at his place of employment at Engage. He possesses computer code of the type
24

1 regulated by Bill 4-21. Pursuant to MD Code, Criminal Law, 4-203(b)(7), he wears and carries a fully
 2 loaded handgun in the course of his employment at Engage, “within the confines of a business
 3 establishment” as “authorized” by the owners of Engage. He does not possess a wear and carry permit.
 4

5 3033. Plaintiff Deryck Weaver,⁵ is an individual supervisory employee of Engage, and
 6 resides in Bethesda, Maryland. His residence is arguably within 100 yards of a “place of public
 7 assembly” as that term is defined in Bill 4-21. He is the father of one minor child who lives with him
 8 at his residence. He is a qualified handgun instructor within the meaning of MD Code, Public Safety,
 9 §5-101(q), as well as a National Rifle Association-certified handgun instructor and National Rifle
 10 Association-certified Chief Range Safety Officer. He possesses within his home one or more “ghost
 11 guns,” including a rifle and a pistol “ghost gun.” From time to time, he assembles a firearm in the
 12 presence of his minor child for the purposes of instruction. Pursuant to MD Code, Criminal Law, 4-
 13 203(b)(7), he wears and carries a fully loaded handgun in the course of his employment at Engage,
 14 “within the confines of a business establishment” as “authorized” by the owners of Engage. He does
 15 not possess a wear and carry permit.

16 3134. Plaintiff Joshua Edgar works as a contractor at Engage, and resides in Gaithersburg,
 17 Maryland. His residence is arguably within 100 yards of a place of public assembly as that term is
 18 defined in Bill 4-21. He possesses within his home one or more “ghost guns,” including a rifle and a
 19 pistol “ghost gun.” From time to time, he assembles a firearm in the presence of a minor child for
 20 purposes of instruction. He does not possess a wear and carry permit.

21 3235. Plaintiff I.C.E. FIREARMS & DEFENSIVE TRAINING, LLC, (“ICE Firearms”) is
 22 a Maryland corporation located at 24129 Pecan Grove Lane, Gaithersburg, Maryland. ICE Firearms
 23 provides firearm training to individuals with handguns, rifles and shotguns. ICE Firearms possesses
 24 computer code of the type regulated by Bill 4-21. ICE Firearms likewise possesses parts of firearms
 25

1 that are banned by Bill 4-21, including “unfinished receivers” arguably banned by Bill 4-21. ICE
2 Firearms is arguably located within 100 yards of a “place of public assembly” as that term is defined
3 in Bill 4-21. ICE Firearms provides instruction in the safe use of firearms.
4

5 3336. Plaintiff Ronald David is the owner and operator of ICE Firearms. He resides in
6 Gaithersburg, Maryland and his home is arguably within 100 yards of a “place of public assembly”
7 as that term is defined by Bill 4-21. He possesses computer code of the type regulated by Bill 4-21.
8 He likewise possesses one or more receivers as defined and banned by Bill 4-21 as a “ghost gun.” He
9 is a “qualified handgun instructor” within the meaning of MD Code, Public Safety, § 5-101(q), and a
10 National Rifle Association-certified Training Counselor in every shooting discipline.
11

12 3437. Plaintiff Nancy David resides in Gaithersburg, Maryland and her home is arguably
13 within 100 yards of a “place of public assembly” as that term is defined by Bill 4-21. She possesses
14 computer code of the type regulated by Bill 4-21. She is a “qualified handgun instructor” within the
15 meaning of MD Code, Public Safety, § 5-101(q). She does not possess a Maryland carry permit.
16

17 **Defendant:**

18 3538. The Defendant is Montgomery County, Maryland, with its principal place and seat
19 located in Rockville, Maryland. Montgomery County is a “person” for purposes of the relief sought
20 by this suit within the meaning of MD Code, Courts and Judicial Proceedings, § 3-401.
21

22 **COUNT I – VIOLATIONS OF THE MARYLAND CONSTITUTION**

23 3639. The Plaintiffs reallege and incorporate herein by reference all the foregoing
24 allegations of this complaint.
25

26 3740. Bill 4-21 regulates “matters of significant interest to the entire state.” *Cole v. Secretary*
27 *of State*, 249 Md. 425, 434, 240 A.2d 272, 278 (1968). Bill 4-21 “affects the rights of persons without
28

1 the area to carry on a business or to do the work incident to a trade, profession, or other calling within
 2 the area.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976).

3 41. The General Assembly has repeatedly debated and introduced legislation, in both the
 4 House of Delegates and in the Senate, attempting to address the subject matters regulated by Bill 4-
 5 21. One such bill, House Bill 740, passed the House of Delegates in 2019. More recently, the General
 6 Assembly has enacted into law Senate Bill 387 and House Bill 425. Senate Bill 387 was enacted
 7 under Article II, Section 17(b) of the Maryland Constitution as Chapter 19. House Bill 425 was
 8 enacted under Article II, Section 17(b) of the Maryland Constitution as Chapter 18. This legislative
 9 activity is strong evidence that the matter is of general, state-wide interest, thereby demonstrating that
 10 Bill 4-21 is not a “local law” within the meaning of Article XI-EA, § 3 of the Maryland Constitution
 11 and is thus *ultra vires*. See *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 631 A.2d 77 (1993).

12 3842. Bill 4-21 has redefined the “place of public assembly” to include “a place where the
 13 public may assemble, whether the place is publicly or privately owned, including a park; place of
 14 worship; school; library; recreational facility; hospital; community health center; long-term facility;
 15 or multipurpose exhibition facility, such as a fairgrounds or conference center.” Such “place of public
 16 assembly includes all property associated with the place, such as a parking lot or grounds of a
 17 building.”

18 39.43. Bill 4-21’s definition of a “place of public assembly arguably encompasses every
 19 sidewalk, every restaurant, every coffee shop, and every private business in the entire County as all
 20 such locales may be places where the public “may” assemble either in the present or in the future.
 21 The term may even include private homes in so far as such homes “may” be used by two or more of
 22 the public from time to time in the present or in the future to “assemble.” Bill 4-21 regulates the
 23 totality of Montgomery County. It would be, as a practical matter, impossible for any person to travel
 24

1 through Montgomery County without passing through an area within 100 yards of such locales now
 2 regulated by Bill 4-21. Allowing county governments to expand their regulatory powers in this
 3 manner will create a nightmarish hodgepodge of local laws that vary from county to county, from city
 4 to city and from town to town, all of which could impose criminal penalties of the sort imposed by
 5 Montgomery County under Bill 4-21. Bill 4-21 directly and adversely affects the rights of non-
 6 residents of Montgomery County “to carry on a business or to do the work incident to a trade,
 7 profession, or other calling within the area.” *Dasch v. Jackson*, 170 Md. 251, 261, 183 A. 534, 538
 8 (1936). By regulating and criminalizing conduct that takes place within 100 yards of such locations,
 9 Montgomery County has exceeded its authority beyond that allowed by MD Code, Criminal Law, §
 10 4-209. Through the enactment of Bill 4-21, the County has effectively nullified the preemption
 11 provisions of Section 4-209 as well as the preemption provisions of MD Code, Public Safety, § 5-
 12 134(a), MD Code, Public Safety, § 5-207(a). ~~Bill 4-21 is not a local law within the meaning of Article~~
 13 ~~XI-E, § 3 of the Maryland Constitution and is thus *ultra vires*.~~

14 44. Bill 4-21 is not a “local law” within the meaning of Article XI-A, § 3 of the Maryland
Constitution because it regulates “matters of significant interest to the entire state” and “deals with”
a matter “which is of significant interest not just to any one county, but rather to more than one
geographical subdivision, or even to the entire state.” *Cole v. Secretary of State*, 249 Md. 425, 434,
240 A.2d 272 (1968). Bill 4-21 also “affects the rights of persons without the area to carry on a
business or to do the work incident to a trade, profession, or other calling within the area.” *Steimel v.*
Board, 278 Md. 1, 5, 357 A.2d 386, 388 (1976). Bill 4-21 is thus unconstitutional under Article XI-
A, § 3 of the Maryland Constitution.

26 45. Under Section 3 of Article XI-A of the Maryland Constitution, all laws passed by the
County are “subject to the Constitution and Public General Laws of this State.” As more fully set

1 forth in Count II, below, Bill 4-21 conflicts and is inconsistent with “General Laws” passed by the
2 General Assembly and is thus in violation of Article XI-A, § 3 of the Maryland Constitution for this
3 additional reason.

46. Under Section 6 of Article XI-A of the Maryland Constitution, the home rule powers
conferred on the County by Article XI-A “shall not be construed to authorize the exercise of any
powers in excess of those conferred by the Legislature upon said Counties or City as this Article sets
forth.” Under Section 6 of Article XI-A, the County’s home rule powers thus do not include the power
to pass any law that is in conflict or inconsistent with “General Laws” passed by the General
Assembly as otherwise specified in Section 3 of Article XI-A of the Maryland Constitution. Bill 4-21
conflicts and is inconsistent with “General Laws” in violation of Section 3 of Article XI-A and thus
is unconstitutional and *ultra vires* under Section 6 of Article XI-A as well.

COUNT II – VIOLATION OF THE EXPRESS POWERS ACT

4047. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
this complaint.

4148. Under the Express Powers Act, MD Code, Local Government, § 10-206, Montgomery
County laws must be “not inconsistent with State law” and the County is barred from enacting laws
that are “preempted by or in conflict with public general law.” Under Section 3 of Article XI-A of the
Maryland Constitution, all laws passed by the County are “subject to the Constitution and Public
General Laws of this State.”

4249. Bill 4-21 violates these provisions of the Express Powers Act and Section 3 of Article
XI-A in multiple ways:

a. MD Code, Criminal Law, § 4-209(a) preempts the County regulation of the
“purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation” of

1 all firearms, but allows the County to regulate such matters “within 100 yards of or in a park, church,
 2 school, public building, and other place of public assembly.” By redefining a “place of public
 3 assembly” to include all places where the public “may assemble” at the present or at some unspecified
 4 date in the future and expressly including ordinary private property within that definition, the County
 5 has vastly and illegally expanded the scope of its authority provided by Section 4-209 beyond the
 6 bounds permitted by the language of Section 4-209. To the extent Bill 4-21 purports to apply to these
 7 expanded areas, it is expressly preempted by the preemption provisions of Section 4-209(a).

8 b. Bill 4-21 bans the “transfer” of all firearms within 100 yards of the County’s
 9 illegally redefined “place of public assembly.” In so far as Bill 4-21’s ban on such transfers includes
 10 regulated firearms and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas
 11 permitted by Section 4-209, that ban is separately preempted by MD Code, Public Safety, § 5-134(a),
 12 which provides that “[t]his section supersedes any restriction that a local jurisdiction in the State
 13 imposes on the transfer by a private party of a regulated firearm, and the State preempts the right of
 14 any local jurisdiction to regulate the transfer of a regulated firearm.”

15 c. Bill 4-21 bans the “sale” of all firearms within 100 yards of the County’s illegally
 16 redefined “place of public assembly.” In so far as Bill 4-21’s ban on such sales includes rifles and
 17 shotguns, and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas permitted
 18 by Section 4-209, that ban is preempted by MD Code, Public Safety, § 5-207(a), which provides that
 19 “[t]his section supersedes any restriction that a local jurisdiction in the State imposes on the transfer
 20 by a private party of a rifle or shotgun, and the State preempts the right of any local jurisdiction to
 21 regulate the transfer of a rifle or shotgun.”

22 d. Bill 4-21 bans the “possession” of all firearms within 100 yards of the County’s
 23 illegally redefined “place of public assembly.” In so far as Bill 4-21’s ban on such sales includes

1 regulated firearms, including handguns, and to the extent Bill 4-21 purports to apply to expanded
 2 areas beyond those areas permitted by Section 4-209, that ban is preempted by MD Code, Public
 3 Safety, § 5-133(a) which provides that “[t]his section supersedes any restriction that a local
 4 jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the
 5 State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm.

6

7 e. Bill 4-21 expressly precludes any person, including a parent, from giving, lending
 8 or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun.” In so far as
 9 this provision regulates the temporary transfer of a regulated firearm, it illegally bans an activity that
 10 is expressly permitted by MD Code, Public Safety, § 5-133(d), which allows a minor to transfer and
 11 possess a regulated firearm under the active supervision of an adult with a parent’s permission. Such
 12 transfers often include instruction in the use of firearms. To the extent that Bill 4-21 burdens such
 13 instruction, Bill 4-21 is preempted by MD Code, Criminal Law, § 4-209(b)(2), which provides that
 14 “[a] county, municipal corporation, or special taxing district may not prohibit the teaching of or
 15 training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of
 16 this section.” These provisions fully apply to instruction in the use of unserialized regulated firearms
 17 lawfully manufactured for personal use.

18

19 ef. Bill 4-21 expressly precludes any person, including a parent, from giving, lending
 20 or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun,” including the
 21 slide of a handgun or a barrel of a rifle. MD Code, Criminal Law, § 4-104, expressly permits a minor
 22 child under the age of 16 to have access to any firearm if that access “is supervised by an individual
 23 at least 18 years old” or if the minor child under the age of 16 has a certificate of firearm and hunter
 24 safety issued under § 10-301.1 of the Natural Resources Article. By necessary implication, access to
 25 a firearm by a minor child between the ages of 16 and 18 is likewise permitted by Section 4-104

1 without any restriction. These provisions fully apply to the transfer of unserialized firearms lawfully
2 manufactured by an individual for personal use. Bill 4-21's ban on lending, giving, or transferring a
3 ghost gun to a minor is inconsistent with these provisions.
4

5 fg. Bill 4-21 provides that a "person must not store or leave a ghost gun, an
6 undetectable gun, or a major component of a ghost gun or an undetectable gun, in a location that the
7 person knows or should know is accessible to a minor." MD Code, Criminal Law, § 4-104, expressly
8 permits a minor child under the age of 16 to have access to any firearm if that access "is supervised
9 by an individual at least 18 years old" or if the minor child under the age of 16 has a certificate of
10 firearm and hunter safety issued under § 10-301.1 of the Natural Resources Article. By necessary
11 implication, access to a firearm by a minor child between the ages of 16 and 18 is permitted by Section
12 4-104 without restriction. In so far as these provisions limit access to a ghost guns or components of
13 ghost guns to a minor in a manner that Section 4-104 permits, Bill 4-21 is inconsistent with Section
14 4-104.
15

16 gh. Bill 4-21 expressly bans the transport, in a vehicle and otherwise, of a "ghost gun,"
17 within 100 yards of the County's illegally expanded "place of public assembly." This ban on transport
18 is inconsistent with MD Code, Criminal Law, § 4-203(b)(3), which provides that a person is permitted
19 to transport a handgun "on the person or in a vehicle while the person is transporting the handgun to
20 or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide
21 residences of the person, or between the bona fide residence and place of business of the person, if
22 the business is operated and owned substantially by the person if each handgun is unloaded and carried
23 in an enclosed case or an enclosed holster." Transport of unloaded rifles and shotguns, including
24 unserialized rifles and shotguns, is permitted under Maryland law without restriction.
25
26
27

1 *hi.* Bill 4-21 expressly bans the “transport,” in a vehicle and/or otherwise, of a “ghost
 2 gun” within 100 yards of the County’s illegally expanded “place of public assembly.” This ban is
 3 inconsistent with MD Code, Criminal Law, § 4-203(b)(5), which expressly permits “the moving by a
 4 bona fide gun collector of part or all of the collector’s gun collection from place to place for public or
 5 private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster.”
 6 Such transport and carriage of unloaded rifles and shotguns, including unserialized rifles and
 7 shotguns, are permitted under Maryland law without restriction.

8 *ti.* Bill 4-21 expressly bans the sale, transfer, possession or transport of a firearm,
 9 including a “ghost gun” or a “major component” of any firearm, within 100 yards of the County’s
 10 illegally expanded “place of public assembly.” These bans are inconsistent with and preempted by §
 11 6 of Ch. 13, of Session Laws of 1972 of Maryland, which expressly preempts all local law restrictions
 12 on the wearing, carrying, or transporting of handguns in the following language:
 13
 14 “SEC. 6. Be it further enacted, That all restrictions imposed by the law, ordinances, or regulations of
 15 the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this
 16 Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said
 17 matters.” See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 543-44, 489 A.2d 1114, 1115-
 18 16 (1985).

19 *jk.* Bill 4-21 expressly bans the mere possession in the home of a “ghost gun” if the
 20 home is within 100 yards of the County’s illegally expanded “place of public assembly.” As thus
 21 defined, this ban on home possession will extend to thousands of homes within 100 yards of Bill 4-
 22 21’s newly defined and illegally expanded “place of public assembly.” This ban on home possession
 23 is inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which expressly permits “the wearing,
 24 carrying, or transporting of a handgun by a person on real estate that the person owns or leases or

1 where the person resides....” Home possession of unserialized handguns, rifles and shotguns lawfully
 2 manufactured for personal use is permitted under Maryland law without restriction.

3 *kl*. Bill 4-21 bans possession of a firearm or ammunition by a business, if the business
 4 is within 100 yards of the County’s illegally expanded “place of public assembly.” However, Bill 4-
 5 21 provides that the bans otherwise imposed by Section 57-11 of the County Code do not “apply to
 6 the possession of one firearm, and ammunition for the firearm, at a business by either the owner who
 7 has a permit to carry the firearm, or one authorized employee of the business who has a permit to
 8 carry the firearm.” The requirement that the owner must have “a permit to carry the firearm” is
 9 inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which permits “the wearing, carrying, or
 10 transporting of a handgun by a person . . . within the confines of a business establishment that the
 11 person owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit.
 12 Bill 4-21’s limitation to possession of “one” firearm by the owner is likewise inconsistent with Section
 13 4-203(b)(6), as that section imposes no limitation on the number of handguns that may be possessed,
 14 worn, carried or transported under this provision of Section 4-203(b)(6). Transport, wear, carriage
 15 and possession of rifles and shotguns, including unserialized rifles and shotguns, in a person’s
 16 business are permitted under Maryland law without restriction.

17 *lm*. Bill 4-21 bans possession of a firearm or ammunition, if the business is within 100
 18 yards of the County’s illegally expanded “place of public assembly.” However, Bill 4-21 provides
 19 that the bans otherwise imposed by Section 57-11 of the County Code do not “apply to the possession
 20 of one firearm, and ammunition for the firearm, at a business by . . . one authorized employee of the
 21 business who has a permit to carry the firearm.” The requirement that the “authorized employee” must
 22 have “a permit to carry the firearm” is inconsistent with MD Code, Criminal Law, § 4-203(b)(7),
 23 which expressly permits “the wearing, carrying, or transporting of a handgun by a supervisory

1 employee: (i) in the course of employment; (ii) within the confines of the business establishment in
 2 which the supervisory employee is employed; and (iii) when so authorized by the owner or manager
 3 of the business establishment.” Such authorized persons covered by Section 4-203(b)(7) are not
 4 required to possess or obtain a Maryland carry permit to carry within the business confines of the
 5 employer’s business. Bill 4-21’s limitation to possession of “one” firearm by “one” authorized
 6 employee is likewise inconsistent with Section 4-203(b)(7), as that section imposes no limitation on
 7 the number of handguns or ammunition that may be possessed, worn, carried or transported under
 8 this provision of Section 4-203(b)(7), and imposes no limitation on the number of employees who
 9 may be “authorized” by the employer under Section 4-203(b)(7). Transport, wear, carriage and
 10 possession of rifles and shotguns, including unserialized rifles and shotguns, by business employees
 11 are permitted under Maryland law without restriction.

12 *m*n. Bill 4-21 defines “ghost gun” to include “an unfinished receiver.” Section 4-209
 13 permits the County to regulate “ammunition for and components of a handgun, rifle, or shotgun,” but
 14 it does not empower the County to redefine such “components” to include an “unfinished receiver.”
 15 An unfinished frame or receiver that is not a “firearm” under Federal law is not a firearm under
 16 Maryland law and thus an “unfinished receiver” is fully legal in under Maryland law if such a receiver
 17 is sufficiently “unfinished” as to not constitute a “firearm.” By defining a “ghost gun” to include any
 18 “unfinished receiver,” Bill 4-21 has gone beyond the scope allowed for local regulation by Section 4-
 19 209 and is thus preempted by Section 4-209 and inconsistent with existing Maryland law.

20 *o*. Bill 4-21 regulates “ghost guns” in Montgomery County in a multitude of ways that
 21 are in direct conflict and inconsistent with the State-wide regulation of unserialized firearms imposed
 22 by Senate Bill 387, 2022 Session Laws, Chapter 19 and House Bill 425, 2022 Session Laws, Chapter
 23 18, as more fully set forth in plaintiffs’ April 14, 2022, Supplemental Memorandum and in plaintiffs’

May 16, 2022, Memorandum In Response To Defendant's Submission Concerning HB 425 and SB 387, as filed with this Court. The April 14, 2022 and May 16, 2022 memoranda are incorporated herein by reference.

1 **COUNT III – VIOLATION OF THE MARYLAND TAKINGS CLAUSE AND**
 2 **DUE PROCESS CLAUSE**

3 4350. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
 4 this complaint. This Count arises under the Maryland Takings Clause, Article III, §_40 of the
 5 Maryland Constitution, and the Due Process Clause, Article 24 of the Maryland Declaration of Rights.

6 4451. Personal property interests of Maryland residents are protected by both the Maryland
 7 Takings Clause, Article III, §_40 of the Maryland Constitution, and the Due Process Clause, Article
 8 24 of the Maryland Declaration of Rights. These provisions are interpreted *in pari materia* with the
 9 Fifth Amendment of the United States Constitution, fully encompass personal property and may
 10 afford more protection than the Fifth Amendment. *Dua v. Comcast Cable*, 370 Md. 604, 805 A.2d
 11 1061, 1070-72 (2002).

12 45-52. Maryland’s Taking Clause and Due Process Clause are violated “[w]henever a
 13 property owner is deprived of the beneficial use of his property or restraints are imposed that
 14 materially affect the property’s value, without legal process or compensation.” *Serio v. Baltimore*
 15 *County*, 384 Md. 373, 863 A.2d 952, 967 (2004).

16 46-53. Maryland’s Taking Clause and Due Process Clause govern retrospective laws.
 17 “Retrospective statutes are those ‘acts which operate on transactions which have occurred or rights
 18 and obligations which existed before passage of the act.’” *Muskin v. State Dept. of Assessments and*
Taxation, 422 Md. 544, 30 A.3d 962, 969 (2011).

19 47-54. Under the Maryland’s Taking Clause and Due Process Clause, “[n]o matter how
 20 ‘rational’ under particular circumstances, the State is constitutionally precluded from abolishing a
 21 vested property right or taking one person’s property and giving it to someone else.” *Dua v. Comcast*
Cable of Maryland, Inc., 370 Md. 604, 623, 805 A.2d 1061 (2002).

1 48-55. The property adversely affected by the provisions of Bill 4-21 constitute protected
 2 personal property within the meaning of the Maryland Takings Clause and Due Process Clause as the
 3 term property for these purposes “embraces ‘everything which has exchangeable value or goes to
 4 make up a man’s wealth.’” *Dodds v. Shamer*, 339 Md. 540, 663 A.2d 1318, 1322 (1995). The personal
 5 property regulated by Bill 4-21 has exchangeable value. Plaintiffs have vested property rights in the
 6 continued possession and use of the property regulated by Bill 4-21.

8 49-56. Bill 4-21 is a retrospective ordinance as it will deprive the plaintiffs of the beneficial
 9 use and possession of their lawful vested property rights and property that was lawfully acquired and
 10 possessed prior to the County’s enactment of Bill 4-21. The restraints and bans that are imposed by
 11 Bill 4-21 materially affect the value of this previously lawfully acquired and possessed property, all
 12 without legal process or compensation.

14 50-57. Bill 4-21 violates Maryland Takings Clause, Article III, § 40, and the Due Process
 15 Clause, Article 24 of the Maryland Declaration of Rights. Under Maryland law, a court may enjoin a
 16 statute that violates Article 40 “unless and until condemnation proceedings in accordance with law be
 17 had, and just compensation awarded and paid for tendered.” *Department of Natural Resources v.*
 18 *Welsh*, 308 Md. 54, 65, 521 A.2d 313, 318 (1986). Plaintiffs are entitled to declaratory and equitable
 19 relief for the unconstitutional taking of their vested property rights by Bill 4-21.

21 **COUNT IV – THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT**
 22
 23 **AND ARTICLE 24 OF THE MARYLAND DECLARATION OF RIGHTS**

24 51-58. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
 25 this complaint. This Count for violations of the Due Process Clause of the Fourteenth Amendment to
 26 the United States Constitution is brought pursuant to and arises under 42 U.S.C. § 1983. For purposes
 27 of this Count, defendant Montgomery County has acted under “color of state law” within the meaning
 28

1 of Section 1983 in enacting Bill 4-21. This Count also arises under Article 24 of the Maryland
 2 Declaration of Rights.

3 52-59. The Due Process Clause of the Fourteenth Amendment to the United States
 4 Constitution provides that no state shall “deprive any person of life, liberty, or property, without due
 5 process of law.” Article 24 of the Maryland Declaration of Rights provides that “[t]hat no man ought
 6 to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled,
 7 or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his
 8 peers, or by the Law of the land.”

9 53-60. The Due Process Clause of the Fourteenth Amendment prohibits the enactment or
 10 enforcement of vague legislation. *Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) (“the prohibition
 11 of vagueness in criminal statutes...is an ‘essential’ of due process, required by both ‘ordinary notions
 12 of fair play and the settled rules of law’”). A penal statute must “define the criminal offense with
 13 sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner
 14 that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S.
 15 352, 357 (1983). “[A] vague law is no law at all.” *United States v. Davis*, 139 S. Ct. 2319, 2323
 16 (2019).

17 54-61. Such a statute need not be vague in all possible applications in order to be void for
 18 vagueness. *Johnson v. United States*, 576 U.S. 591, 602 (2015) (“our holdings squarely contradict the
 19 theory that a vague provision is constitutional merely because there is some conduct that clearly falls
 20 within the provision’s grasp”). “*Johnson* made clear that our decisions ‘squarely contradict the theory
 21 that a vague provision is constitutional merely because there is some conduct that clearly falls within
 22 the provision’s grasp.’” *Dimaya*, 138 S.Ct. at 1214 n.3. A court “cannot construe a criminal statute
 23 on the assumption that the Government will use it responsibly,” *United States v. Stevens*, 559 U.S.
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1 460, 480 (2010), and “cannot find clarity in a wholly ambiguous statute simply by relying on the
 2 benevolence or good faith of those enforcing it.” *Wollschlaeger v. Governor, Fla.*, 848F.3d 1293,
 3 1322 (11th Cir. 2017) (en banc).

4 55.-62. Article 24 of the Maryland Declaration of Rights prohibits the enactment or
 5 enforcement of vague legislation. *Galloway v. State*, 365 Md. 599, 614, 781 A.2d 851 (2001) (“The
 6 void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be
 7 “sufficiently explicit to inform those who are subject to it what conduct on their part will render them
 8 liable to its penalties.”). Under Article 24, a statute must provide “legally fixed standards and adequate
 9 guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]” and
 10 “must eschew arbitrary enforcement in addition to being intelligible to the reasonable person.” (Id. at
 11 615).

12 56.-63. Bill 4-21 is a penal statute as a violation of Bill 4-21 is a Class A violation that can
 13 result in a criminal fine and up to six months imprisonment for each day in which the violation
 14 continues. Bill 4-21 contains no *mens rea* requirement of any type and thus these punishments may
 15 be imposed without regard to the defendant’s intent or knowledge. Under the Due Process Clause of
 16 the Fourteenth Amendment, plaintiffs may bring a pre-enforcement action challenging Bill 4-21 as
 17 they are not required “to risk criminal prosecution to determine the proper scope of regulation.”
 18 *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965). Maryland law is in accord for purposes of allowing
 19 a pre-enforcement action arising under Article 24 of the Maryland Declaration of Rights. *Pizza di
 20 Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020) (collecting cases).

21 57.-64. Bill 4-21 criminally punishes conduct that takes place within 100 yards of “a place of
 22 public assembly,” which is defined as “a place where the public may assemble, whether the place is
 23 publicly or privately owned.” Such places include, but are not limited to, “a park; place of worship;

1 school; library; recreational facility; hospital; community health center; long-term facility; or
 2 multipurpose exhibition facility, such as a fairgrounds or conference center.” Bill 4-21 includes within
 3 these places “all property associated with the place, such as a parking lot or grounds of a building.”
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5 58.-65. Bill 4-21 does not define “public,” and that term could arguably be read to include any
 6 person who may be present in Montgomery County for any reason. Bill 4-21 does not define “may
 7 assemble,” and thus that term could be read to include a meeting of two or more people in one place
 8 for any reason, including for every-day activities such as lunch. By enlarging the ordinance to reach
 9 into places where the public “may” assemble,” Bill 4-21 may be arguably read to encompass any
 10 location where it is possible for two or more members of the public to meet, either in the present or
 11 sometime in the undefined future. Bill 4-21 fails to provide any notice of the actual location of such
 12 places and it is impossible to predict or know where two or more members of the “public” “may”
 13 meet. These terms could change in their application from day to day. Plaintiffs are thus left to guess
 14 at where two or more members of “public” “may assemble.”
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16 59.-66. Bill 4-21 bans conduct taking place within 100 yards of a “library,” but includes no
 17 definition of “library.” Bill 4-21 deleted the statute’s former definition of “library” as limited to a
 18 “public” library and expressly covers places regardless of “whether the place is publicly or privately
 19 owned.” The term “library” could thus be arguably read to include any “library” of any type or size,
 20 regardless of whether the library is in the home or private building if, at any time in the present or the
 21 future, two or more members of the undefined public “may” assemble in that library. Plaintiffs are
 22 left to guess as to the locations of such “libraries.”
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24 60.-67. Bill 4-21 does not define “recreational facility,” but it does delete the statute’s former
 25 limitation to “government-owned or operated” recreational facility and thus the term “recreational
 26 facility” could be arguably read to include a backyard swing set or private playground or other place
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1 where “recreation” may take place. Bill 4-21 adds to statute’s preexisting scope to include a
2 “community health center” and “long-term facility,” but provides no definition for either type of
3 facility. Bill 4-21 does not define “school,” but does delete the statute’s former limitation to
4 “elementary or secondary” school, thereby arguably regulating within 100 yards of any “school” of
5 any size and of any type, private or public, including locations where any organization, of any type,
6 may present instruction of any kind. Plaintiffs are left to guess as to the locations encompassed within
7 the vague use of these terms.

8 61.68. Bill 4-21 does not define “park” but it does delete the ordinance’s former definition
9 of “park” as including only a “government owned” park that was “identified by the Maryland-
10 National Capital Park and Planning Commission.” The term “park” thus could be arguably read to
11 include any grassy spot, a commercial “park” or a tract of private land attached to a country house if
12 it possible for two or more members of the public to “assemble” in that privately owned “park.”
13 Plaintiffs are left to guess as to the locations encompassed within the vague use of “park.”

14 62.69. Bill 4-21 defines “ghost gun” to include “an unfinished receiver.” Bill 4-21 then
15 purports, to ban the sale, rental, lending or the giving of an “unfinished receiver” to a minor or
16 affording access to an “unfinished receiver” to a minor. Bill 4-21 also bans, within 100 yards of a
17 “place of public assembly,” as illegally expanded by Bill 4-21, the sale, transfer, manufacture,
18 assembly, possession or transport of an unfinished receiver, including possession of an unfinished
19 receiver in the home. Bill 4-21 does not define “unfinished receiver.” An unfinished receiver that is
20 not a “receiver” under Federal law is not a receiver under Maryland law and thus there is no definition
21 for “unfinished receiver” that could be applied to Bill 4-21. Plaintiffs are left to guess as to the
22 meaning of “unfinished receiver” as used in Bill 4-21.

1 63.-70. Bill 4-21 defines “major component” of a firearm to include “the slide or
 2 cylinder” and, in the case of a rifle or shotgun, the “barrel.” Bill 4-21 then purports, to ban the sale,
 3 rental, lending or the giving of a “major component” of a ghost gun to a minor or affording access to
 4 a “major component” to a minor. Bill 4-21 also bans, within 100 yards of its illegally defined place
 5 of “public assembly,” the sale, transfer, possession, or transport of a “major component.” A “major
 6 component” of a firearm, as defined by Bill 4-21, is not a firearm under Federal or Maryland law and
 7 a “major component” as thus defined can be lawfully obtained, transferred and transported without
 8 restrictions under Federal and Maryland law. A “major component,” as thus defined by Bill 4-21, can
 9 be lawfully used to build a fully *serialized* firearm for personal use. There is no practical way to
 10 distinguish a “major component” that can be used to build a *non-serialized* firearm from a major
 11 component that can be used to build a *serialized* firearm. Bill 4-21 thus arguably can be read as
 12 banning the building of *any serialized* firearm, including a firearm that is not a “ghost gun” under the
 13 Bill 4-21’s own definition of a “ghost gun.” Bill 4-21 is self-contradictory, vague and leaves
 14 enforcement of this provision to the arbitrary and discriminatory discretion of law enforcement
 15 officials.

16 64.-71. Bill 4-21’s regulation of places where two or more members of the “public” “may”
 17 assemble in the present or unknowable future provides no reasonable notice of the actual locations
 18 that are criminally regulated by Bill 4-21. Bill 4-21’s use of vague and undefined terms deprives
 19 ordinary people, including plaintiffs, of the ability to understand what conduct is prohibited and what
 20 conduct is not. Bill 4-21’s use of vague terms, including its reach into the home and other private
 21 property, permits and encourages arbitrary and discriminatory enforcement of its provisions in the
 22 sanctity of the home and other places protected by the Fourth Amendment of the United States
 23 Constitution. Bill 4-21 provides no standards for enforcement by law enforcement personnel or by
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1 other officials of the County who may be charged with its enforcement. Rather, Bill 4-21 hands off
 2 “to unelected prosecutors and judges,” the duty of defining criminal behavior thorough *ad hoc*,
 3 discretionary enforcement decisions. *Davis*, 139 S.Ct. at 2323. Bill 4-21 is accordingly void for
 4 vagueness under the Due Process Clause of the Fourteenth Amendment and Article 24 of the
 5 Maryland Declaration of Rights, both facially and as applied to one or more of the individual
 6 plaintiffs.

8 65-72. Each of the plaintiffs has engaged and intends to engage in conduct arguably regulated
 9 by the unconstitutionally vague provisions of Bill 4-21, including the actual or constructive possession
 10 of firearms, major components and “unfinished receivers.” Each of the plaintiffs is and has been
 11 chilled in the actions they may take by the prospect of enforcement of Bill 4-21’s unconstitutionally
 12 vague provisions. Each of the plaintiffs and MSI’s members are hindered or chilled in their right to
 13 live or work in Montgomery County or to otherwise travel through Montgomery County by the threat
 14 of arbitrary or discriminatory enforcement of the unconstitutionally vague provisions of Bill 4-21.
 15 Each of the plaintiffs has been harmed and is imminently threatened with future harm by the prospect
 16 of enforcement of the unconstitutionally vague provisions of Bill 4-21.

19 66-73. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable relief
 20 and compensatory damages, including nominal damages, for the foregoing violations of their Due
 21 Process rights under the Fourteenth Amendment. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021).
 22 ~~The County’s wholesale and utter disregard of Plaintiffs’ Due Process rights is so reckless or callously~~
 23 ~~indifferent to the federally protected rights of plaintiffs as to warrant the imposition of further~~
 24 ~~sanctions to achieve punishment or deterrence. Accordingly, punitive damages are appropriate and~~
 25 ~~may be awarded by the trier of fact. *Smith v. Wade*, 461 U.S. 30 (1983).~~ Plaintiffs are likewise entitled
 26 to reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, for the foregoing violations of
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1 their Due Process rights under the Fourteenth Amendment. Plaintiffs are entitled to declaratory and
2 equitable relief for their claims arising under Article 24 of the Maryland Declaration of Rights.
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COUNT V -- SECOND AMENDMENT

74. The Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of this complaint.

75. The Second Amendment to the United States Constitution provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The Supreme Court has squarely held that the Second Amendment bestows an individual right to keep and bear arms and that right may be exercised by all responsible, law-abiding Americans. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Second Amendment is applicable to the States as incorporated through the Due Process Clause of Fourteenth Amendment and is a fundamental right. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

76. On June 23, 2022, the Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). In *Bruen*, the Supreme Court held that the Second Amendment right to bear arms means “a State may not prevent law-abiding citizens from publicly carrying handguns because they have not demonstrated a special need for self-defense.” Slip op. at 24-25 n.8. This holding abrogates the holding of the Maryland Court of Appeals in *Williams v. State*, 417 Md. 479, 496, 10 A.3d 1167 (2011), that the Second Amendment does not apply outside the home. Under *Bruen*, “the Second Amendment guarantees a general right to public carry.” *Bruen*, slip op. at 24.

77. The *Bruen* Court struck down as unconstitutional New York's "proper cause" requirement for issuance of a permit to carry a handgun in public. The Court went on to reject the "means-end," two-step, intermediate scrutiny analysis used by the lower courts to sustain gun regulations, holding that "[d]espite the popularity of this two-step approach, it is one step too many." *Bruen*, slip op. at 10. The Court ruled that "the standard for applying the Second Amendment is as

1 follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution
 2 presumptively protects that conduct. The government must then justify its regulation by
 3 demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*,
 4 slip op. at 15.

5 78. The historical analogue required by *Bruen* to justify a firearms regulation looks to
 6 1791 or, at the latest, 1868, when the 14th Amendment was adopted. See *Bruen*, slip op. at 25-26.
 7 That is because "Constitutional rights are enshrined with the scope they were understood to have
 8 when the people adopted them." *Bruen*, slip op. at 25, quoting *District of Columbia v. Heller*, 554
 9 U.S. 570, 634-635 (2008). 20th century and late 19th century statutes and regulations do "not provide
 10 insight into the meaning of the Second Amendment when it contradicts earlier evidence." *Bruen*, slip
 11 op. at 58 n.28. Under *Bruen*, the historical analogue necessary to justify regulation must be "a well-
 12 established and representative historical analogue." *Bruen*, slip op. at 21. Historical "outlier"
 13 requirements of a few jurisdictions are to be disregarded. *Bruen*, slip op. at 46 n.22, 57, 62. This
 14 historical analysis is a legal inquiry and does not require fact-finding by a court. *Bruen*, slip op. at 24-
 15 25 n.8.

16 79. *Bruen* holds that governments may regulate the public possession of firearms at
 17 "legislative assemblies, polling places, and courthouses" and notes that governments may also
 18 regulate firearms "in" schools and government buildings. *Bruen*, slip op. at 21, citing *Heller*, 554 U.S.
 19 at 599. *Bruen* states that "courts can use analogies to those historical regulations of 'sensitive places'"
 20 to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive
 21 places are constitutionally permissible." (Id.). The *Bruen* Court rejected New York's "attempt to
 22 characterize New York's proper-cause requirement as "a 'sensitive-place' law," ruling that
 23 "expanding the category of 'sensitive places' simply to all places of public congregation that are not
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1 isolated from law enforcement defines the category of ‘sensitive places’ far too broadly.” Slip op. at
 2 22. As the Court explained, “[p]ut simply, there is no historical basis for New York to effectively
 3 declare the island of Manhattan a ‘sensitive place’ simply because it is crowded and protected
 4 generally by the New York City Police Department.” (Id.).
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6 80. The government bears the burden of proof to show the historical presence of such
 7 “well-established and representative” historical analogue regulations. See *Bruen*. at 52 (“we are not
 8 obliged to sift the historical materials for evidence to sustain New York’s statute. That is respondents’
 9 burden.”). Public safety concerns are not part of the analysis and cannot be used to justify any statute
 10 or regulation that restricts the general right to carry arms in public. Under *Bruen*, “when the Second
 11 Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that
 12 conduct.” Slip op. at 8. A government “may not simply posit that the regulation promotes an important
 13 interest,” but rather “the government must demonstrate that the regulation is consistent with this
 14 Nation’s historical tradition of firearm regulation.” Id.
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16 81. The text of the Second Amendment, as construed by the Supreme Court and lower
 17 courts, indisputably covers the “possession, sale, transport, and transfer” of firearms and ammunition,
 18 as regulated by Bill 4-21 and Section 57-11 of the County Code. Bill 4-21 and County Code Section
 19 57-11 are not supported by any showing that the regulatory burdens on possession, transport, transfer
 20 or sale of firearms and/or ammunition that these regulatory provisions inflict are “consistent with this
 21 Nation’s historical tradition of firearm regulation.” Nothing in *Bruen* can be read to allow a State (or
 22 a municipality) to regulate or ban firearms at every location where the “public may assemble”
 23 regardless of whether the place is “publicly or privately owned,” in the manner specified by Bill 4-
 24 21.
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1 82. There is no appropriate historical analogue that would permit the County to ban all
2 possession, sale, transfer or transport of firearms or ammunition in or at a church or a park, much less
3 in any “other place of public assembly” as vastly defined by the County to include any place where
4 the public “may assemble” regardless of whether such place is on public or private land. Nor is there
5 any appropriate historical analogue for any such regulation within 100 yards of such locations.
6
7 Montgomery County is no more a “sensitive place” than is Manhattan.

8 83. Under the Second Amendment, the County may presumptively enact otherwise lawful
9 firearms and ammunition regulations for the five, specific locations identified in *Bruen* and *Heller*.
10 *viz*, “in” schools, public buildings, polling places, courthouses and legislative assemblies, to the extent
11 such regulations are otherwise authorized by State law. The County may not enact or enforce any
12 provision of the County Code that operates in such a way as to “deny ordinary citizens their right to
13 public carry.” *Bruen*, slip op. at 30 n.9. The County may not enact or enforce firearms or ammunition
14 regulations for any location or place *beyond* the five, specific locations identified in *Bruen* and *Heller*.
15 *viz*, “in” schools, public buildings, polling places, courthouses and legislative assemblies, without
16 proving that “a well-established and representative historical analogue” for any such regulation exists.
17
18 The County has not done so with respect to the locations regulated by Bill 4-21 and County Code
19
20 Section 57-11.

21 84. Bill 4-21 and Section 57-11 of the County Code are *facially* unconstitutional under
22 the Second Amendment to the extent that Bill 4-21 and County Code Section 57-11 purport to impose
23 any regulatory restrictions on the possession, transfer, sale or transport of firearms and ammunition
24 in or at any place other than the five specific locations specified in *Bruen* and *Heller*. Bill 4-21 and
25 Section 57-11 of the County Code are *facially* unconstitutional under the Second Amendment to the
26 extent that Bill 4-21 and County Code Section 57-11 purport to impose any regulatory restrictions on
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1 the possession, transfer, sale or transport of firearms and ammunition in or at any place within 100
2 yards of any location.

3 85. Bill 4-21 and Section 57-11 of the County Code are unconstitutional under the Second
4 Amendment as applied to the named plaintiffs and to any member of plaintiff MSI to the extent that
5 Bill 4-21 and Section 57-11 purport to impose any regulatory restrictions on the possession, transfer,
6 sale or transport of firearms or ammunition in or at any place other than the five specific locations
7 specified in Bruen and Heller. Bill 4-21 and Section 57-11 of the County Code are unconstitutional
8 under the Second Amendment as applied to the named plaintiffs and to any member of plaintiff MSI
9 to the extent that Bill 4-21 and County Code Section 57-11 purport to impose any regulatory
10 restrictions on the possession, transfer, sale or transport of firearms or ammunition in or at any place
11 within 100 yards of any location.

12 86. To the extent that MD Code, Criminal Law, § 4-209(b) purports to authorize County
13 or local regulation for areas other than the five locations, or in any manner or scope beyond the manner
14 or scope permitted in Heller and Bruen, it is likewise unconstitutional under the Second Amendment
15 and thus cannot legally or constitutionally authorize such local regulation. To the extent that MD
16 Code, Criminal Law, § 4-209(b) purports to authorize County or local regulation on the possession,
17 transfer, sale or transport of firearms or ammunition in or at any place within 100 yards of any location
18 it is likewise unconstitutional under the Second Amendment and thus cannot legally or
19 constitutionally authorize any such local regulation.

20 87. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable relief
21 and compensatory damages, including nominal damages, for the foregoing violations of their Second
22 Amendment rights. Uzuegbunam v. Prechezewski, 141 S.Ct. 792 (2021). Plaintiffs are likewise entitled

1 to reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, for the foregoing violations of
2 their Second Amendment rights.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Plaintiffs respectfully request:

5 A. That this Court issue a declaratory judgment that Bill 4-21 is not a "local law," and is in
6 conflict and inconsistent with the "General Law" as enacted by the General Assembly is thus
7 unconstitutional under Article XI-EA, § 3 and Article XI-A, § 6, of the Maryland Constitution, as
8 more fully set forth in Count I above;

9 B. That this Court issue a declaratory judgment that Bill 4-21 violates the Express Powers
10 Act, MD Code, Local Government, § 10-206, in that it is in conflict or inconsistent with, and/or
11 preempted by Maryland statutes, as more fully set forth in Count II, above;

12 C. That this Court issue a declaratory judgment that Bill 4-21 violates the Maryland Takings
13 Clause, Article III § 40, and the Due Process Clause of Article 24 of the Maryland Declaration of
14 Rights, in so far as it deprives plaintiffs and MSI members of the beneficial use of their lawfully
15 acquired, vested property rights, as more fully set forth in Count III above, enjoin enforcement of Bill
16 4-21 until compensation is paid, calculate the amount of compensation due, and order the County to
17 pay such compensation;

18 D. That this Court issue a declaratory judgment that Bill 4-21 is void for vagueness under the
19 Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 24
20 of the Maryland Declaration of Rights, as more fully set forth in Count IV above;

21 E. That this Court issue a declaratory judgment that Bill 4-21 and County Code Section 57-
22 11 are unconstitutional under the Second Amendment, as more fully set forth in Count V above.

F. That this Court find that all plaintiffs have been and/or will be irreparably harmed by the conduct of defendant challenged in Counts I, II, III, IV and V, and enter a preliminary and permanent injunction barring the County from enforcing Bill 4-21 and County Code Section 57-11 against plaintiffs and the members of MSI;

FG. That this Court award plaintiffs compensatory-and-punitive damages for the County's violations of the plaintiffs' Fourteenth Amendment constitutional rights, including without limitation, nominal damages, as authorized by 42 U.S.C. § 1983;

GH. That this Court award attorney's fees and costs against defendant, as authorized by 42 U.S.C. § 1988;

H. That this Court award the plaintiffs such other and further relief as in law and justice they may be entitled to receive, including punitive damages.

JURY DEMAND

COME NOW the Plaintiffs, by and through counsel, demand a trial by jury as to all issues triable by jury in this matter.

Respectfully submitted,

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